

DLC

Disability Law Center, Inc.
11 Beacon Street, Suite 925
Boston, Massachusetts 02108

(617) 723-8455 *Voice*
(800) 872-9992 *Voice*
(617) 227-9464 *TTY*
(800) 381-0577 *TTY*
(617) 723-9125 *Fax*

Western Mass Office
30 Industrial Drive East
Northampton, MA 01060
(413) 584-6337
(800) 222-5619
(413) 582-6919 *TTY*
(413) 584-2976 *Fax*

<http://www.dlc-ma.org>
email: mail@dlc-ma.org

12/23/03

Office of Regulations
Social Security Administration
100 Altmeyer Bldg.
6401 Security Blvd.
Baltimore, MD 21235-6401

BY FAX, (410)966-2830, 3 pages

RE: Proposed Regulations, Reinstatement of Entitlement to Disability Benefits

Dear Commissioner Barnhart:

Thank you for your consideration of the following comments when promulgating final rules concerning the expedited reinstatement process available under the Ticket to Work Act.

The Disability Law Center has long been involved with the rights of Social Security's disability insurance and SSI beneficiaries. The Center's Disability Benefits Project technical support unit has provided representation to beneficiaries at all levels of the administrative and court system and has worked with national training teams and national workgroups to protect and improve the lot of persons with disabilities who depend upon your agency for benefits. The Center's attorneys focusing on Social Security have more than 50 cumulative experience working with the disability programs and are nationally recognized experts. We have focused much of our work on "return to work" issues beginning in the early 1980s. We have been involved with the Ticket to Work since the Act's inception and currently represent beneficiaries facing barriers to employment under the auspices of the Protection and Advocacy for Beneficiaries of Social Security project.

At the outset, it is important to note that the proposed regulations have taken a fairly simple concept, "easy off/easy on," and turned it into a very complex, somewhat overwhelming process. The individuals having to resort to expedited reinstatement are in a most vulnerable position and must be able to easily and understandably access benefits assured of as little risk as possible. By

The Protection and Advocacy System for Massachusetts

THIS AGENCY SUPPORTED BY
United Way

definition, this population is facing an exacerbation of their disabling medical conditions that has caused a cessation of work activity. Faced with a new set of overwhelming rules and regulations at a time of great need will force many who consider expedited reinstatement (EXR) to opt to file a new application simply because of the complexities created by the proposed regulations. How this plays out in the field is fairly illustrative.

Presently, an individual forced to stop working because of an exacerbation of her medical condition is immediately presented with the option of reapplying or requesting EXR. Should the individual opt to request EXR, local offices are often requiring that a new application be completed at the same time. Individuals need to be able to make clear decisions as to what route back to benefits is best given their situation as well as the ramifications of each. An EXR application should be made simple, short and easy to complete. It should not be necessary to file a complete new application at the time of making a request for EXR. Claims representatives need to be trained and able to provide a precise, understandable explanation of each critical option; detailed to the point of indicating benefits amounts payable under each option. Claimants must not be the recipients of unpleasant surprises based upon a choice made without full disclosure and information.

An overall comment to the EXR concerns the ability of SSA to terminate payments once the 6 month "provisional benefit" period has passed. It has become clear that a great number of reinstatement determinations are not made within the 6 month period provided by the Ticket to Work Act. The result is that beneficiaries who opt for EXR, in order to receive immediate payments, often find themselves without cash benefits 6 months later when state agencies fail to make timely reinstatement determinations. The coinciding loss of health care coverage is also of significant concern to these beneficiaries. This "safety net" that was intended to provide an "easy on" for those workers whose disabilities cause a termination of work activity is proving to be a wide mesh indeed; one that misses most of its "catch."

Delays in making EXR determinations may be caused by SSA's inability to locate files fast enough for state agencies to do their jobs. The inability to locate files should not be held against the beneficiary given this is a matter completely beyond their control. This simply presents another reason why benefits should continue beyond the "provisional period." In the case of lost, or "missing," files SSA should consider extending the "provisional period" until such time that the file is located and/or the state agency has had its 6 months to process the EXR application.

There is nothing in the Act that requires benefits payments to stop after the "provisional period" has passed. The Act indicates that the "provisional benefits" are paid for up to 6 months and that those benefits paid during this time, with few exceptions, will not be subject to overpayment assessment. One simple solution is to continue to pay benefits until the EXR decision is made and subject those benefits paid after month 6, those that are not "provisional," to overpayment assessment should EXR and/or new application eligibility ultimately be denied.

The inability to make a determination within the "provisional benefits" period causes EXR to become a meaningless concept as individuals would clearly be in a more favorable position had

3

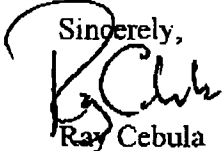
they elected a new application. At the very least, a new application denial is appealable. Given that an EXR determination that denies eligibility becomes a new application for eligibility and protective filing purposes there appears to be little gained by SSA insisting that the EXR determination not be an initial determination for appeal purposes.

The 24 month reinstatement period is very confusing and will be very difficult for beneficiaries to understand and use effectively. As this period, in practical terms, will require reporting of wages on a monthly basis in order to insure correct payment and that SSA local offices are completely incapable of processing wage reports in a timely manner, it is likely that this reinstatement period will be fraught with land mines for any beneficiary who attempts to work during this 24 month period. We continue to hear from beneficiaries who attempt to report earnings to local SSA offices, only to be told things such as "it won't do any good," or "don't worry, we'll catch up to you." While we applaud SSA's announcements of attempting to make a "culture change" within the agency, the trickle down effect of this change is taking far too much time for SSA local offices to effectively deal with beneficiaries who are working, are seeking information about returning to work, or need assistance and information returning to the benefits programs. These are not welcoming thoughts given that this group of beneficiaries is among the most likely to return to the work force. SSA must take steps to insure that wage reports will be treated in a timely manner for this, and other, purposes associated with the disability return to work programs.

Lastly, a clear, separate form must be developed for the EXR application. This form must be short, simple and address only those items needed for EXR purposes in order to preserve the "easy on" intentions of this provision. Claims representatives must be fully trained and well versed in EXR and be able to provide beneficiaries with sufficient information to allow for a meaningful choice between EXR and new application. Resources must be developed in each local office to allow claims representatives immediate access to EXR and work related information should questions develop during beneficiary interviews or paper processing.

Thank you for your consideration of these remarks.

Sincerely,



Ray Cebula
Senior Staff Attorney
Disability Benefits Project